

STATE OF INDIANA)	IN THE LAPORTE CIRCUIT COURT
) SS:	
COUNTY OF LAPORTE)	SITTING AT LAPORTE, INDIANA
IN RE: PETITION FOR THE)	CAUSE NO. 46C01-0811-MI-569
ESTABLISHMENT OF THE)	
PRAIRIE LAKES)	
CONSERVANCY DISTRICT)	

) Natural Resources Commission
) Administrative Cause
) Number: 09-032C

**RECOMMENDED REPORT OF THE NATURAL RESOURCES COMMISSION
 WITH RESPECT TO THE PETITION FOR CREATION
 OF THE PRAIRIE LAKES CONSERVANCY DISTRICT**

I. PETITION, SUMMARY OF EVIDENCE RECEIVED AT PUBLIC HEARING

A. PETITION

On January 26, 2009, Ethan S. Lowe, co-counsel for Petitioner, filed with the Indiana Natural Resources Commission, Division of Hearings (the "NRC") the Petition for Creation of the Prairie Lakes Conservancy District (the "Petition") along with the LaPorte Circuit Court Order entered on January 23, 2009 by Thomas Alevizos, LaPorte Circuit Court. The LaPorte Circuit Court Order states in pertinent part:

...

- 1) The Court finds that the proposed Prairie Lakes Conservancy District contains five (5) freeholds as freehold is defined at I.C. 14-33-2-3 and that the Counterpart Petitions presented to the Court contain the verified and certified signatures of five (5) freeholders within the proposed Conservancy District...
- 2) The Court further finds that the Petitioners have satisfied all statutory notice requirements for publication of hearing as such requirements are contained in...I.C. 14-33-2-12 and this Court has jurisdiction to proceed with the statutory process of review and determination regarding the feasibility and priority of the establishment of the proposed Prairie Lakes Conservancy District.
- 3) The Court further finds that the Counterpart Petitions for establishment of the Prairie Lakes Conservancy District bear the requisite and necessary number of verifiable freeholder signatures to comply with the statutory percentage of freeholders required in...I.C. 14-33-2-3.

- 4) The Court also finds that one hundred percent (100%) of all freeholders who own property in the proposed district have signed the Petition Counterparts filed herein.
- 5) The Court further finds the Counterpart Petitions are in proper legal form and comply with the statutory requirements as to form and content as contained in the provisions of the Indiana Conservancy Statute (as amended).

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Counterpart Petitions for Creation of the Prairie Lakes Conservancy District are now referred by this Court pursuant to statute to the Natural Resources Commission ..., which shall make a determination, recommendation, and report to this Court as expeditiously as possible (no later than one hundred and twenty (120) days from the date of the entry of this Order) as to whether the proposed district:

1. Appears to be necessary;
2. Holds promise of economic and engineering feasibility;
3. Seems to offer benefits in excess of costs and damages as to those purposes which are other than water supply or storage of water for augmentation of stream flow or sewage disposal, and that the public health will be served immediately and prospectively by the establishment of the District as to the purposes of water supply or sewage disposal, storage of water for augmentation of stream flow, or any combination thereof;
4. Proposes to cover a property area;
5. Could be established and operated in a manner compatible with existing Conservancy Districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or supply projects.

As a consequence of the LaPorte Circuit Court Order, the NRC on February 17, 2009 circulated letters to governmental agencies for comment.

On March 28, 2009, the LaPorte Circuit Court vacated its original referral to the NRC. But on April 13, the LaPorte Circuit Court reinstated its previous referral.

B. SUMMARY OF PETITIONERS' EVIDENCE

Petitioner and Supporting Evidence

A public hearing was held on May 18, 2009, as scheduled pursuant to the Court's Order and Ind. Code § 14-33-2-17, in the LaPorte County Public Library, 904 Indiana Avenue, LaPorte, Indiana. On April 27, 2009, a notice of the public hearing was published in the LaPorte *Herald-*

Argus, a newspaper of general circulation in La Porte County, Indiana. A notice of the public hearing was also posted to the calendar on the NRC's Internet site.

Present at the public hearing were: David L. Hollenbeck and Ethan S. Lowe, Petitioners' attorneys; Michael Olsen, Zeman Homes & Neighborhoods; Steve Henschen, Civil Engineer; Dennis Metheny, Coolspring Township Trustee; Michael Kobis, resident of Coolspring Township; and Terri Price, Department of Natural Resources, Division of Water.

Stephen Lucas, Hearing Officer, conducted the public hearing, and provided a brief overview of the conduct of the public hearing. After brief remarks, Lucas called upon the Petitioners' attorneys, David L. Hollenbeck and Ethan S. Lowe, from the law firm of Blachly, Tabor, Bozik & Hartmann, LLC.

David Hollenbeck offered brief opening remarks. He noted the geographic boundaries of the proposed Prairie Lakes Conservancy District were owned entirely by the Petitioners.

Ethan Lowe introduced exhibits as follows, and each of them was admitted into evidence: **Petitioner's Exhibit 1**— Letter Report prepared by Bonar Group dated May 14, 2009 (with attachments: Construction Cost Estimate for proposed lots south of Cobblestone of Gravity Sanitary Sewer System, Water Distribution System; and Construction Cost Estimate for Wastewater and Drinking Water Distribution System); **Petitioners' Exhibit 2**— Memorandum Agreement between Sanitary District of Michigan City and Terrace Acres MHC, Inc. dated February 24, 1999; and **Petitioners' Exhibit 3**—Agreement between Aspen I, LLC and the Department of Water Works of the City of Michigan City, Indiana dated June 28, 2001.

Lowe explained the conservancy district was proposed to serve the following three purposes:

- (1) Provide for the collection, treatment, and disposal of sewage and other liquid wastes.
- (2) Provide water supply, including treatment and distribution, for domestic, industrial, and public use.
- (3) Develop forests, wildlife areas, parks, and recreation facilities, if feasible in connection with beneficial water management.

Lowe stated during the public hearing, however, that the Petitioners had determined not to immediately pursue the development of forests, wildlife areas, parks, and recreation facilities.

This proposed purpose was withdrawn from Commission review, and it is not considered further in the report.

Lowe called Steve Henschen, P.E., to testify in favor of the Petition. For the most part, his testimony was a summary of **Petitioners' Exhibit 1**. A few highlights of his testimony are set forth below:

Steve Henschen testified he is a Professional Engineer and a Vice President of the Bonar Group, a consultant located with offices in Fort Wayne, Indiana. He provided foundation and an explanation for each of the Petitioners' exhibits. He said the proposed district contained approximately 412 acres and was located just west of Michigan City in LaPorte County, south of US 20. Henschen said 800 units are proposed for development within the Prairie Lakes Conservancy District. Currently, there are approximately 130 units on site, and zoning has authorized a maximum of 1,500 units.

Henschen testified each soil type within the proposed district is rated as "severe" or "unsuitable" for private septic systems. Developing onsite treatment within the boundaries of the proposed district would be "cost-prohibitive as compared with treatment by the Michigan City Sanitary District". Henschen testified it would be "very costly" to provide a new treatment system for wastewater. Negotiations with the Michigan City Sanitary District have been productive, and the recommendation was to pipe wastewater to its existing facilities for treatment.

Henschen testified his research revealed that a "conventional wastewater system", using gravity flow, was feasible both from an engineering perspective and from an economic perspective. The cost would approximate \$7,100 per lot for wastewater, with many new systems in other localities costing "between \$15,000 and \$20,000 per lot." The next phase proposed by Zeman Homes for development was a pod containing 113 lots, and the costs were extrapolated based on this pod.

Henschen testified his analyses revealed that conventional water distribution from Michigan City was also supported for engineering feasibility and economic feasibility. The current line was already very close to the proposed district. In accordance with specifications sought by the Michigan City Sanitary District, there would be individual meters for each lot. Using the same 113-lot pod referenced for wastewater treatment, the determination was that water supply would

be made at approximately \$6,800 per lot. He testified, "It is a very economical system because of the density" of units. Commonly, the costs for water supply would be "\$10,000 to \$15,000 per lot."

Henschen testified the wastewater treatment facilities and the water supply facilities would be operated under supervision of the Indiana State Department of Health. The Petitioners were not advocating a "private sewer or water supply system." Private operations "would definitely be problematic in situations such as this with high density development."

Henschen testified the proposed district would serve a proper area. The proposed district would not include any "third parties"—persons who would be brought into the district involuntarily. The boundaries would include the "complete build-out" anticipated by the development.

Henschen testified the proposed district could be established and operated in a manner compatible with established conservancy districts and other water management projects. Other utilities are not providing wastewater treatment or water supply within the proposed district. "There is no overlap of other utilities providing the same services." He noted the approaches recommended for the proposed district were cooperative with the Michigan City Sanitary District.

In response to a question by the Hearing Officer, Henschen testified the proposed district and its recommended treatment facilities were located entirely within the Great Lakes Basin of the State of Indiana.

Michael Olsen, Vice President of Zeman Homes & Neighborhoods, testified his company has zoning approval for its operations within the proposed district.

Interested Local Officials and Citizens

Dennis Metheny, Coolspring Township Trustee, testified the proposed district was located within Coolspring Township. He said he was sensitive to the consequences the district might have for current or future township residents, and his desire was to appropriately represent their welfare and interests. "I am not against this [proposed district] at this time."

Metheny directed several questions to the Petitioners. In response to one of the questions, the Petitioners indicated they did not intend to develop wetlands within the proposed district. If an aspect of development ultimately impacted regulated wetlands, the Petitioners pledged to obtain any requisite permits.

Metheny testified he believed there were irregularities with operations of the Michigan City Sanitary District, including improper discharges into Trail Creek. He indicated these would soon come to light.

Michael Kobis testified he is a resident of Cool Spring Township. He noted the freeholders who live in the district will be subject to taxation to which persons outside the district are not. "Tax is my problem. The people who live in the conservancy district are going to be paying through the nose."

Kobis complained that the Department of Natural Resources provided him with an outdated publication describing the Conservancy District Act. He acknowledged that many aspects of the publication were applicable, but he said several were outdated. He said notice of the public hearing was posted in an obscure newspaper.

Kobis added, "It seems like stuff is hidden from us. It's not a government of the people, by the people, and for the people. I'm concerned with why do we have to rule this with a conservancy district." He said there were already multiple conservancy districts in LaPorte County, and another was not needed. "To some degree, I see this as" a prelude to Michigan City "annexation" of this area of Cool Spring Township.

II. STATE AGENCY COMMENTS

Indiana Utility Regulatory Commission

Abby R. Gray, Senior Commission Counsel, filed on February 26, 2009 the following comments, in pertinent part:

The General Counsel's Division of the Indiana Utility Regulatory Commission (the "IURC") has reviewed your letter and the petition regarding the creation of the Prairie Lakes Conservancy District. This proposed conservancy district will, among other things, provide public water supply and the collection, treatment, and disposal of sewage. Indiana law provides that conservancy districts

electing to provide public water supply under I.C. 14-33-20 "shall file the initial schedule of rates and charges to patrons of the district with the [Indiana Utility Regulatory] Commission." I.C. 14-33-20-14. The Commission has no objection to Prairie Lakes' petition for the creation of a conservancy district. However, if in its district plan Prairie Lakes elects to provide public water supply under I.C. 14-33-20, then it must file an initial schedule of rates and charges with the Commission. In addition, the Commission notes that any new community public water supply system must fulfill the technical, managerial, and financial capacity requirements of 327 IAC 8-3.6 prior to making a submission to the Indiana Department of Environmental Management for a permit to construct.

As you know, a district established for the purpose of providing for the collection, treatment and disposal of sewage and other liquid wastes produced outside of the district boundaries must petition the IURC for territorial authority to engage in the services to territory outside of the district boundaries. I.C. 14-33-1-2. a review of the Commission's records indicates that there does not appear to be any regulated sewage disposal utility currently providing service in the proposed territory of the Prairie Lakes Conservancy District. Since the petitioners seek establishment of the territory of the Prairie Lakes Conservancy District (and do not propose to collect or treat waste produced outside the district boundaries), it appears that the IURC is without jurisdiction over the petition as it relates to the establishment of the sewer service for this conservancy district.

Indiana Department of Natural Resources

On August 18, 2009, Michael W. Neyer, Director of the Department of Natural Resources, Division of Water, filed a Memorandum in response to its review of the Petition for Creation of the Prairie Lakes Conservancy District. The Department Memorandum is attached to this report as Exhibit A.

III. RECOMMENDED FINDINGS

As provided by Ind. Code § 14-33-2-17, the Natural Resources Commission is to make a determination and report to the LaPorte Circuit Court whether the proposed Prairie Lakes Conservancy District meets certain conditions. Within this statutory structure, the following findings are recommended to the LaPorte Circuit Court with respect to the purposes of the proposed Prairie Lakes Conservancy District:

PROVIDING WATER SUPPLY, INCLUDING TREATMENT AND DISTRIBUTION, FOR DOMESTIC, INDUSTRIAL, AND PUBLIC USE

The proposed district appears to be necessary.

The proposed Prairie Lakes Conservancy District, located in an unincorporated area of LaPorte County, would encompass approximately 412 acres, the majority of which is undeveloped. In

the northern portion of the proposed conservancy district is Weatherstone Village, a 130-unit residential development equating to an approximate 2.5 residential units per acre. The area within the proposed district boundaries has zoning authority for a maximum of 1,500 residential units. The Petitioners anticipate the entire proposed development within the conservancy district boundaries, Aspen Estates, will contain approximately 850 residential units at full build out.¹

The Letter Report prepared by Bonar Group, an engineering firm, states:

On site individual drinking water wells is not a desirable option due to the large number of wells (850) that would be required for each lot. This number of private unregulated wells in a densely populated area would not be looked upon favorably by local planning agencies, especially with the nearness of a public drinking water system.

A separate public drinking water supply, storage and treatment system for this proposed conservancy district would also be very cost prohibitive to this project, compared to connecting to the Michigan City Water Department system. The Michigan City water utility appears to have the capacity and willingness to service this area based on existing agreements in place between the developer and the Michigan City Water Department.

Petitioners' Exhibit 1, p. 2.

A potable water supply is necessary for development within the conservancy district boundaries. If a contractual agreement with the Michigan City Water Department is unsuccessful, the establishment of the conservancy district is an appropriate mechanism to provide a water supply. A coordinated effort between the proposed district and the Michigan City Water Department is recommended for the benefit of the freeholders and other entities. The proposed district appears to be necessary for the purpose of providing water supply, including for domestic, industrial, and public use.

Whether the proposed district holds promise of economic and engineering feasibility

The Petitioners did not present a preliminary engineering study regarding water supply to the freeholders within the proposed district other than describing the option of contracting with the Michigan City Water Department. The Petitioners did not seek a private water supply, and evidence was not presented to identify another source of drinking water for the district, such as a reservoir or underground aquifer. Rather, testimony was presented that individual water wells would not be feasible due to the density of the development. Henschen testified the operation of a private water supply "would definitely be problematic in situations...with high density development".²

The evidence is that Aspen I, LLC³ and the Department of Water Works of the City of Michigan City entered into an agreement (the "Agreement") on June 28, 2001. The Agreement is set

¹ Petitioners' Exhibit 1, p. 1.

² *Testimony of Henschen*, p. 5 of this report.

³ A search for registered business "Aspen I, LLC, was conducted using the Indiana Secretary of State, Business Services Division's online registered business database. The search results were negative for "Aspen I, LLC".

forth, in pertinent part: [To note: Aspen I, LLC is referred to as the "Developer"; the Department of Water Works of the City of Michigan City is referred to as the "Department"].]:

...

RECITALS

- A. Developer is planning an approximate 850 site manufactured housing community West of Hitchcock Street and South of U.S. Highway 20, LaPorte County, Indiana, to be Wheatherstone Woods, (the "Development").
- B. Department has requested that the Developer individually meter the Development for water usage purposes rather than providing a master meter for the Development in order to be capable of providing fire service to the Development.
- C. Department is willing to individually meter the Development based upon the terms and conditions of this Agreement.

NOW, THEREFORE, it is agreed by and between the Developer and the Department as follows:

- 1. The Developer shall pay to the Department an estimated sum not to exceed \$16,000 for a 12" tap and line across Hitchcock Street, (the "Tap Fee"). The Developer contemplates that this tap shall be sufficient to service the proposed 850 site Development. The initial phase shall consist of forty-two (42) sites (the "Initial Phase"). As the Development progresses in phases, additional taps and a water main along Hitchcock Street may be required. It is understood by the Developer and the Department that this agreement pertains only to the Initial Phase. It is understood, however, that as the Development progresses in stages beyond the Initial Phase, that all individual units within the Development shall be individually metered.
- ...
- 5. Developer shall pay to the Department the sum of \$15,839.00 for forty-two (42) meter pits and miscellaneous fittings ("Meter Pit Fee"). The Developer shall be solely responsible for all costs relating to the installation and maintenance of the meter pits.
- 6. Developer shall pay to the Department \$8,484.00 for forty-two (42) meters (the "Meter Fee"), which includes the installation of same by the Department. Meters shall at all times remain the sole property of the Department.
- ...
- 11. This agreement may be *assigned or transferred* by the Developer without prior consent of the Department; provided, however, that Developer shall not be relieved of any liability hereunder as a result of such assignment.
- 12. This Agreement *shall be binding upon* and inure to the benefit of the parties hereto and *the successors or assigns of the Developer*.
- ...

Petitioners' Exhibit 3 (emphasis added).

Listed among other registered businesses was "Aspen Estates, LLC". The search results do not disclose whether "Aspen I, LLC" was also known as or renamed "Aspen Estates, LLC". Both list their business entity address as 6547 North, Avondale, Chicago, IL 60631.

Included in Petitioners' Exhibit 3, page six, is a copy of a check (No. 100158) in the amount of \$24,323.00 from "Aspen Estates, LLC" payable to "Michigan City Dept. of Water Works" dated June 28, 2001. The check amount is the sum of financial obligations set forth in Paragraphs 5 and 6 of the Agreement, and may be payment to satisfy those financial obligations. Even though "Aspen I, LLC" is listed as a party to the Agreement, Paragraphs 11 and 12 of the Agreement allow Aspen I, LLC to transfer the Agreement to a successor or assign. The evidence suggests that as early as 2001, the Michigan City water utility was willing to service the development within the proposed conservancy district boundaries. Before a conservancy district is formed, the Petitioners must reconcile past agreements to include proper entity names and clarify the existence of an agreement by the Michigan City Water Department to provide water supply to Aspen Estates.

An existing Michigan City Water Department water supply line lies "very close" to the proposed district boundary.⁴ The construction cost estimate for the drinking water distribution system is \$6,800 per residential unit.⁵ Commonly, the costs for water supply would be \$10,000 to \$15,000.⁶ A contractual agreement between the proposed conservancy district and the Michigan City Water Department appears to be viable with respect to economic and engineering feasibility. Upon the Petitioners reconciling past agreements to include proper entity names and to clarify the existence of an agreement by the Michigan City Water Department to provide water supply to Aspen Estates, the proposed district holds promise of economic and engineering feasibility for the purpose of water supply.

The public health will be served immediately or prospectively by the establishment of the district

A centralized water system that offers potable water represents a stable, safe, and chemically acceptable supply source. Whether the Michigan City Water Department or an alternate source supplies the municipal quality drinking water, the establishment of the district for water supply will serve the public health prospectively as the residential development within the proposed district boundaries, Aspen Estates, progresses.

The proposed district proposes to cover and serve a proper area.

For the purposes of water supply, the proposed Prairie Lakes Conservancy District would cover and serve a proper area. Each part is contiguous. The proposed district would provide water services to the Aspen Estates development. The boundaries of the proposed conservancy district and the development are the same in regards to water supply. The proposed district proposes to cover and serve a proper area.

Whether the proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects

⁴ *Testimony of Henschen*, p. 4 of this report.

⁵ Petitioners' Exhibit 1, p. 7.

⁶ *Testimony of Henschen*, p. 5 of this report.

The area within the proposed Prairie Lakes Conservancy District is wholly within the Lake Michigan Basin. The site is drained by the Kintzele Ditch which flows to Lake Michigan. For the purpose of water supply, the evidence presented at hearing and state agency comments do not identify a water management or a water supply project with which the proposed Prairie Lakes Conservancy District would interfere.

PROVIDING FOR THE COLLECTION, TREATMENT, AND DISPOSAL OF SEWAGE AND OTHER LIQUID WASTES

The proposed district appears to be necessary.

Petitioners' Exhibit 1 indicates the soils on the Aspen Estates site are generally Blount, Houghton Muck, and Pewamo soil types. The source for this information is the Soil Conservation Service for LaPorte County, Indiana Soil Survey. All soil types shown on the soil survey for this acreage have a rating of severe or unsuitable for a septic system absorption field. A soil type is defined as "severe" if soil properties or site features are so unfavorable or so difficult to overcome that special design, significant increases in construction cost and possible increased maintenance is required.⁷ The suitability of the site for individual septic systems is limited for a development of this density.

Currently, there is no public sewer service for the area within the proposed Prairie Lakes Conservancy District. The proposed conservancy district is intended to provide wastewater collection service to the Aspen Estates residential development. As stated in the Engineering Analysis, a conventional gravity flow sewer system with lift stations would be installed to collect the sewage generated within the proposed Aspen Estates development.

The Michigan City wastewater treatment facility appears to have the capacity and willingness to service this area based on prior agreements between the developer and the Michigan City Sanitary District.⁸ Proposed connection to the Michigan City Sanitary District wastewater treatment plant will offer municipal quality services for Aspen Estates community. The conservancy district offers the mechanism for financing of the proper operation and maintenance of the sanitary sewer lines and lift stations within the district boundaries. The proposed district appears to be necessary.

Whether the proposed district holds promise of economic and engineering feasibility.

Testimony was presented by Henschen that developing onsite treatment of sewage and other liquid wastes within the boundaries of the proposed district would be "cost prohibitive as compared with sewage treatment by the Michigan City Sanitary District."⁹ Henschen also testified the planned installation of a conventional wastewater collection system—gravity flow accompanied by lift stations—is feasible both from an engineering and an economic perspective. The sewage created within the proposed conservancy district boundaries would be piped to the

⁷ Petitioners' Exhibit 1, § 1.a., p. 2.

⁸ *Id.*, § 1.b., p. 2

⁹ *Testimony of Henschen*, p. 4 of this report.

Michigan City sewer utility for treatment. The cost per lot for wastewater would "approximate \$7,100" with many new systems in other localities costing between "\$15,000 and \$20,000 per lot".¹⁰

The Department of Natural Resources (the "DNR") notes in its Memorandum, attached as Exhibit A, that there "appears to be conflicts and inconsistencies" between the Petitioners' Exhibit 2, testimony and submitted documentation. The DNR concludes, "Because of the inconsistent and conflicting documentation, the Department of Natural Resources could not make a determination whether or not the proposed Prairie Lakes Conservancy District holds promise of economic and engineering feasibility."¹¹

The proposed conservancy district includes five freeholders, Edward C. Zeman, Aspen Estates, LLC, Aspen Estates III, LLC, Aspen Estates IV, LLC, and Corporate 88th, LLC. The parent company of these five freeholders is Zeman Homes & Neighborhoods. The developer of the proposed Aspen Estates, Zeman Homes & Neighborhoods, was the developer of Terrace Acres, which is located adjacent to the proposed district's northeastern boundary.¹² In February 1999, Terrace Acres MHC, Inc. ("TERRACE ACRES") entered into a Memorandum of Agreement with Sanitary District of Michigan City ("THE DISTRICT"). The Memorandum of Agreement is set forth below, in pertinent part:

...
WHEREAS, THE DISTRICT owns and operates a municipal sanitary sewer system; and

WHEREAS, TERRACE ACRES is the owner of a certain mobile home park situated in LaPorte County, Indiana, located on U.S. Highway 20, and outside of the city limits of the City of Michigan City, Indiana; and

WHEREAS, TERRACE ACRES is *desirous of expanding said mobile home park to include an additional Seven Hundred (700) to Nine Hundred (900) units;* [emphasis added] and

WHEREAS, TERRACE ACRES is currently involved in the acquisition of the property to expand said mobile home park as set forth above; and

WHEREAS, TERRACE ACRES is desirous of entering a private sewer agreement with THE DISTRICT...; and

WHEREAS, THE DISTRICT is desirous of entering a private sewer agreement with TERRACE ACRES; and

WHEREAS, both parties *acknowledge the need for certain upgrades of existing equipment* [emphasis added] of THE DISTRICT to accommodate the expansion of TERRACE ACRES.

NOW THEREFORE...

1. SCOPE OF PROJECT ... The parties acknowledge that said upgrade is required in order for THE DISTRICT to accommodate the sanitary sewer needs which will result from the expansion project contemplated by the TERRACE ACRES...

Petitioners' Exhibit 2, pp. 1, 2.

¹⁰ The cost per lot for the Aspen Estates wastewater collection system was extrapolated from the cost of a planned development phase containing 113 lots.

¹¹ Exhibit A, p. 3.

¹² Exhibit B, revised boundary map of proposed Prairie Lakes Conservancy District.

Terrace Acres is adjacent and contiguous to the proposed Prairie Lakes Conservancy District boundary. As clarified by the Petitioners' attorney, the residential development within the proposed conservancy district boundaries, Aspen Estates, is the name of the development expansion anticipated by Terrace Acres as referenced in the 1999 Memorandum of Agreement.

Even though the name of the party listed in the 1999 Memorandum of Agreement is Terrace Acres, Aspen Estates is seemingly the anticipated developer. Through this Agreement, the Michigan City sewer utility exhibited an apparent willingness and ability to accept and treat the sewage created within the proposed Prairie Lakes Conservancy District. Before a conservancy district is formed, the Petitioners must reconcile past agreements to include proper entity names and to clarify the existence of an agreement by the Michigan City sewer utility to perform these services for Aspen Estates. Upon compliance with these conditions, the proposed district holds promise of economic and engineering feasibility for the collection and treatment of sewage and other liquid wastes.

The public health will be served immediately or prospectively by the establishment of the district

To accommodate the number of homes and density planned in Aspen Estates, the superiority of a centralized wastewater treatment facility over individual septic systems is unquestioned. The installation and maintenance of the sewer lines by the proposed conservancy district and collection and treatment of the sewage by Michigan City sewer utility will provide municipal quality services for the community. The establishment of the proposed district will serve the public health prospectively as development within the proposed district boundaries progresses.

The proposed district proposes to cover and serve a proper area.

The proposed Prairie Lakes Conservancy District would be responsible for the maintenance of the sewage collection facilities installed within its boundaries and treatment of the sewage and other liquid wastes treated by the Michigan City sewer utility. The boundaries of the district and the development are one in the same regarding wastewater management. The proposed district would cover and serve a proper area.

The proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

The DNR in its Memorandum notes that a countywide regional sewer district, Springfield Regional Sewer District, was expanded in February 2009 for LaPorte County. DNR indicates that conflicts may arise due to boundary overlap.¹³ The Commission addressed an analogous circumstance in considering its report for another proposed conservancy district.

“Where adequate services are currently being provided, there is no need. Need is not satisfied, however, by the development of a plan for future services.” Natural Resources Commission Report with respect to the *Petition by the West Central Conservancy District to Add Additional Area* (March 14, 2000), Hendricks Circuit Court Cause Number

¹³ Exhibit A, p. 5.

32C01-9107-MI-257, Administrative Cause Number 99-193C, p. 20. In considering whether a proposed district would serve a proper area, the Commission does not make a determination of exclusivity and does not determine the relative abilities of competing entities to provide services. "Minutes of the Natural Resources Commission (March 14, 2000)" in the Matter of *the Petition by the West Central Conservancy District to Add Territory*, Hendricks Circuit Court Cause Number 32C01-9107-MI-257, Administrative Cause Number 99-193C.

IC 13-26 governs sewer districts. The statutory article does not preclude the establishment of a conservancy district for the purpose of collection, treatment, and disposal of sewage and other liquid wastes within a sanitary sewer district's boundaries. Indeed, IC 13-26-5-2(15) provides an opportunity for a regional sewer district to enter into agreements with "another eligible entity..." and the "cooperating entities may jointly appropriate land either within or outside their respective borders...." Also provided a regional sewer district may "[c]onstruct, acquire by purchase...and maintain works considered necessary to accomplish" its purposes "within or outside" its boundaries. (IC 13-26-5-2(12)).

Report of the Natural Resources Commission, in the matter of the *Petition for the Western Shelby Conservancy District*, filed with the Shelby Circuit Court, January 18, 2005, Cause No. 73C01-0408-MI-37, pp. 15, 16.

No evidence was presented to indicate that the Springfield Sewer District presently has ability to provide service within the proposed conservancy district boundaries. It appears that through the 1999 Memorandum of Agreement, the Michigan City sewer utility exhibits a willingness and ability to accept and treat, with upgrades to its facility, the sewage created within the proposed Prairie Lakes Conservancy District.

The area within the proposed Prairie Lakes Conservancy District is wholly within the Lake Michigan Basin. The site is drained by the Kintzele Ditch, which flows to Lake Michigan. With treatment of sewage produced within the proposed district boundaries provided by the Michigan City sewer utility, as anticipated, the proposed Prairie Lakes Conservancy District, if established, would not create a diversion from the Great Lakes Basin that would effectuate IC 14-25-1-11 and 42 USC §19622-20. The record before the Commission indicates the proposed Prairie Lakes Conservancy District could be established and operated in a manner compatible with established conservancy districts and other water management or water supply projects.

Dated: August 31, 2009

Stephen L. Lucas
Hearing Officer

Jennifer M. Kane
Hearing Officer



**Division of Water
Memorandum**

Date: August 18, 2009

m 8/18/9

To: Steve Lucas
Hearing Officer, NRC, Division of Hearings

From: Michael W. Neyer, PE, Director
DNR, Division of Water

FILED

AUG 18 2009

NATURAL RESOURCES COMMISSION
DIVISION OF HEARINGS

Subject: Prairie Lakes Conservancy District, LaPorte County
Establishment

On January 23, 2009, the LaPorte Circuit Court, Cause Number 46C01-0811-MI-569, ordered that the Counterpart Petitions filed for the formation of the Prairie Lakes Conservancy District were in proper legal form and comply with the statutory requirements of the Indiana Conservancy District Act. In accordance with IC 14-33-2-17, the petition was filed with the Natural Resources Commission (NRC) on January 26, 2009. The petition was forwarded to the Division of Water for review and comment.

The proposed Prairie Lakes Conservancy District is located in Section 7, Township 37 North, Range 4 West, an unincorporated area of LaPorte County, west of Michigan City. The proposed area contains approximately 412 acres and is planned for a manufactured home development. This land is currently undeveloped except for the Weatherstone Village development on the northern portion of the parcel. The developer has received zoning approval for 1500 units at the Aspen Estates site, however it is anticipated that the entire development will only contain 850 units at full build out.

The proposed Prairie Lakes Conservancy District includes five (5) freeholders which are: Edward C. Zeman, Aspen Estates, LLC, Aspen Estates III, LLC, Aspen Estates IV, LLC, and Corporate 88th, LLC. The signatures on the five (5) counterpart petitions represent one hundred percent (100%) of the freeholders within the boundaries of the proposed Prairie Lakes Conservancy District. The petitioners requested to be established for the purposes of: 1) Providing water supply, including treatment and distribution, for domestic, industrial, and public use, 2) Providing for the collection, treatment and disposal of sewage and other liquid wastes, and 3) Developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management. At the May 18, 2009 public hearing, the attorney for the petitioners requested that the purpose of developing forests, wildlife areas, and parks be excluded. It was also noted that Zeman Homes and Neighborhood is the parent company of all five (5) freeholders.

As directed by Chapter 2, Section 17 of the Indiana Conservancy Act (IC 14-33), and pursuant to the public hearing on May 18, 2009, concerning the proposed establishment of the Prairie Lakes Conservancy District in LaPorte County, the Division of Water offers the following comments.

(1) Appears to be necessary

- (1) Providing water supply, including treatment and distribution, for domestic, industrial, and public use

The petitioner hired a professional engineer with experience in residential site development, to review alternatives to provide water supply to the proposed development. Several options were considered:

EXHIBIT

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1) individual wells, 2) on-site water supply, storage, and treatment, and 3) provide centralized water distribution from the Department of Water Works for the City of Michigan City. Based on professional testimony at the May 18th public hearing, the alternative of drilling individual wells on each lot was not desirable due to the large number of wells (850) that would be required. Local planning agencies may take exception to the number of unregulated wells in this densely populated area. The construction of a separate public drinking water facility would be cost prohibitive considering the proximity of the Michigan City service area. In order to provide safe drinking water to the proposed development, a need for a viable entity to develop and implement a plan to provide this service is needed. The establishment of a conservancy district appears to be an appropriate way to provide this service to the area and to ensure a revenue source to provide appropriate expertise for the operation and maintenance of this service. In addition, based on testimony at the May 18th public hearing, the purpose of providing for water supply, including treatment and distribution, for domestic, industrial and public use appears necessary.

(2) Providing for the collection, treatment, and disposal of sewage and other liquid wastes
According to the Soil Conservation Service, Soil Survey for LaPorte County the soils at the Aspen Estates site are generally Blount, Houghton, Muck, and Pewamo soil types which are rated as "severe" or "unsuitable" for septic system absorption fields. If septic systems were installed, the lot size would have to be increased and separation distances from water wells would need to be considered. According to the developer's engineer, this would restrict the land from being utilized to its fullest potential for a manufactured home development. The engineer indicated that Michigan City Sanitary District exhibited a willingness to provide sewer service. With close proximity to Michigan City, no other options for sewage disposal were investigated. However, subsequent communication with the Indiana Department of Environmental Management revealed that a county wide Regional Sewer District was put into place in February 2009.

On-site septic systems appear to be unsuitable for this area. From the testimony and submitted documents, the need for sanitary sewer service appears to be necessary. But it is unclear whether the Michigan City Sanitary District or the Regional Sewer District would best serve the proposed development.

(2) Holds promise of economic and engineering feasibility

The petitioner hired an engineering consultant, Bonar Group with extensive experience in residential site-development, to assist with technical and cost analysis for this development. A conventional gravity flow sewer system with lift stations is planned for the Aspen Estates Development. This system will connect to the Michigan City Sanitary District which will also provide treatment. The estimated construction costs are estimated at \$7100 per lot or \$6,035,000 for the entire 850 lot development. Wastewater construction costs are typically \$15,000 to \$20,000 per lot but because of the density of the homes the costs are much less.

A Memorandum of Agreement dated February 24, 1999 between the Sanitary District of Michigan City and Terrace Acres MHC, Inc. was presented at the May 18th public hearing. This Agreement indicated that the Sanitary District was willing to enter into a private sewer agreement to provide services to a manufactured home development located on U.S. Highway 20 outside of the city limits of Michigan City. The 10 year old Agreement further stated that Terrace Acres was acquiring property for an expansion of 700 to 900 units. It is unknown at this time if the wastewater treatment plant has additional capacity to allocate 10 years later.

There appears to be conflicts and inconsistencies between the Agreement, testimony, and submitted documentation with regard to the name of the proposed development and proper assignment. Testimony and other documents indicate that the manufactured home development encompassed by the proposed Prairie Lakes Conservancy District would be Aspen Estates. However, the 1999 Agreement for sewer service is for Terrace Acres and Section 5 states "that this Agreement cannot be altered, changed, modified or added to except in writing and signed by Terrace Acres and the District. Further, Terrace Acres appears to be located north of the proposed Prairie Lakes Conservancy District at the southwest corner of US 20 and Hitchcock Street. Maps indicate that this is already a large, built out manufactured home community and would not be included within the proposed conservancy district boundaries. Therefore, the 1999 Agreement appears to be for another development and not pertinent to the one in question. Even though email from the petitioner's attorney dated June 5, 2009 stated that Terrace Acres MHC, Inc. and Aspen I, LLC are subsidiaries of Zeman Homes and Neighborhoods there is some question as to the validity and coverage of the Agreement with the Sanitary District of Michigan City.

Mr. Steve Henschen, P.E. also investigated and prepared preliminary information related to the purpose of providing water supply, including treatment and distribution, for domestic, industrial, and public use. It is estimated that utilizing services from the Department of Water Works for the City of Michigan City, the cost per lot for constructing a drinking water system would be \$6800. Based on past experiences, Mr. Henschen indicated that providing this service typically costs \$10,000 to \$15,000 per lot. It was also noted at the May 18th public hearing that the Department of Water Works requires fire hydrants to be installed. Fire fighting services are provided by the Cool Spring Township Fire Department and the availability of hydrants does offer a higher level of fire protection.

A copy of a 2001 Agreement between the Aspen I, LLC (listed as the developer) and the Department of Water Works of the City of Michigan City was presented at the May 18th public hearing. A follow up email from the petitioner's attorney dated June 5, 2009, indicates Aspen I, LLC is a subsidiary of Zeman Homes and Neighborhoods. This Agreement states that it was for a development known as Weatherstone Woods, and it was signed by Edward C. Zeman in June of 2001.

There appears to be conflicts in the Agreement for water service. First, the name of the development (Weatherstone Woods) does not match what is in other documents or testimony provided at the public hearing. Subsection 1 of the Agreement for water service indicates that the *initial phase shall consist of forty-two sites and it is understood by the Developer and Department that this Agreement pertains only to the initial phase*. Testimony at the public hearing indicated that the Aspen Estates Development would contain 850 sites. But the most critical concern is that the Agreement was never signed by the Department of Water Works of the City of Michigan City. This utility obviously intended to provide water service to a manufactured housing community eight (8) years ago but without the binding signatures the conditions and/or circumstances may have changed. Further, after 8 years it is unknown whether sufficient capacity exists to supply potable drinking water to the proposed conservancy district.

Because of the inconsistent and conflicting documentation, the Department of Natural Resources could not make a determination whether or not the proposed Prairie Lakes Conservancy District holds promise of economic and engineering feasibility. Contact with the petitioner's attorney on June 19, 2009 asked if up-to-date assignment for the Agreement with the Department of Water Works could be pursued.

An Extension of Time was forwarded to the NRC by the petitioner's attorney on June 22, 2009. In turn, the NRC filed a motion requesting a time extension with the LaPorte Circuit Court on June 24, 2009. As indicated in email dated August 11, 2009, the petitioner's attorney is still in the process of obtaining assignments with Michigan City to address these concerns.

(3) Seems to offer benefits in excess of costs

According to the Indiana Conservancy Act (IC 14-33-2-17c3), the commission shall make a determination and report to the court whether the proposed district meets the following conditions:

The proposed district seems to offer benefits in excess of costs and damages for the purposes other than the following:

- (A) water supply;
- (B) storage of water for augmentation of stream flow;
- (C) sewage disposal.

Because the Prairie Lake Conservancy District proposes to establish for water supply and sewage disposal, benefits in excess of costs do not need to be presented.

(4) Whether the public health will be served immediately or prospectively by the establishment of the district

According to the Indiana Conservancy Act (IC 14-33-2-17c4), the Commission shall make a determination and report to the court whether the proposed district meets the following conditions:

(4) Whether the public health will be served immediately or prospectively by the establishment of the district for any of the following purposes:

- (A) water supply;
- (B) sewage disposal;
- (C) storage of water for augmentation of stream flow;
- (D) any combination of these purposes.

The establishment of the district to provide a water-supply system and sewage collection system for the proposed residential development would serve the public health prospectively by providing municipal quality services to the future homeowners, as well as provide a stable source of revenue to provide appropriate operation and maintenance of the facilities and associated structures. But because there are inconsistencies between the Agreements, testimony, and other documentation, the Department of Natural Resources cannot make a determination at this time.

(5) Proposes to cover and serve a proper area

Chapter 3 of the Indiana Conservancy Act states "any area may be established as a district if each part of the district is contiguous to another part". The proposed boundaries of the Prairie Lakes Conservancy District are contiguous and include all the property included in the proposed residential development that will receive benefit from the purposes and services provided by the district. As proposed, the boundaries of the Prairie Lakes Conservancy District appear to cover and serve a proper area.

(6) Could be established and operated in a manner compatible with established Conservancy Districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects

This area lies entirely within the Lake Michigan Basin and the Kintzele Ditch Watershed. It is proposed that the utility services will be provided by the Sanitary District of Michigan City and the Department of Water Works of the City of Michigan City which are also located within the Lake Michigan Basin. Therefore this would not be considered a water diversion from the Lake Michigan Basin under the Water Resources Development Act.

The proposed district is located in an unincorporated area of LaPorte County, outside the boundaries of Michigan City. Testimony at the May 18th public hearing indicated that the proposed Prairie Lakes Conservancy District could be established and operated in a manner compatible with other districts/projects.

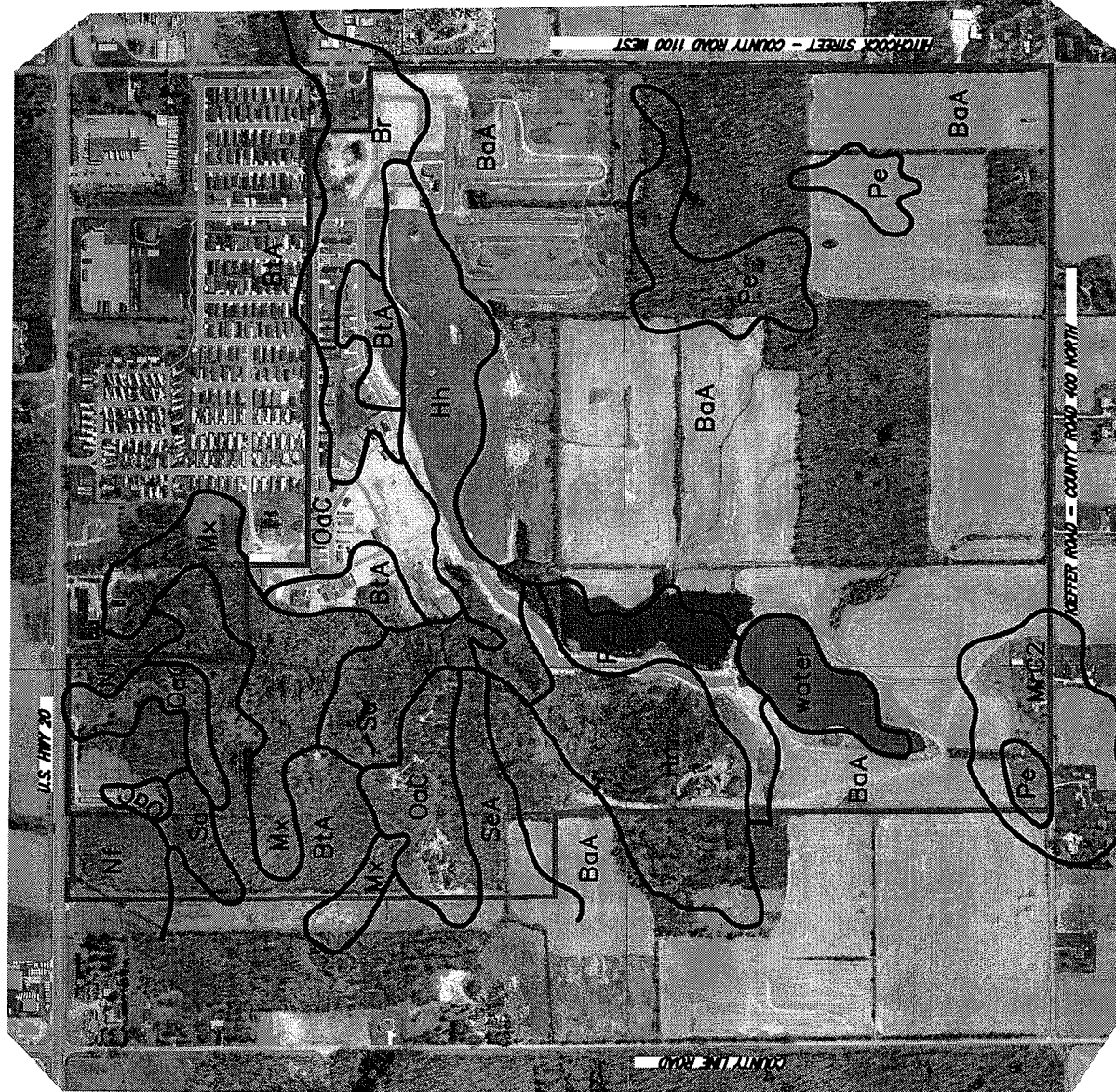
However, contact with the Indiana Department of Environmental Management subsequent to the public hearing indicates that the Springfield Regional Sewer District (LaPorte County) was expanded in February 2009 to be a county wide regional sewer district. The overlap of conservancy district boundaries and duplication of services could present future issues. At this time, the Department of Natural Resources cannot make a determination whether or not the Prairie Lakes Conservancy District can be established and operated in a manner compatible with other water management or water supply districts.

Should you have questions concerning the above comments, please contact Terri Price, Project Development Section at 317-234-1081.

MWN/TCP

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SOILS SURVEY EXHIBIT



LEGEND

BaA
Br
BtA
Hh
Hm
MxC2
Mx
Nf
OaC
Pe
Sa
SeA
Wa

Blount Silt Loam
Bourbon Sandy Loam
Brems Fine Sand
Histosols & Aqualls
Houghton Muck
Morocco Loamy Fine Sand
Oakville Fine Sand
Pewamo Silty Clay Loam
Saugatuck Pipestone Complex
Selfridge Loamy Fine Sand
Walkill Silt Loam
Morley Silt Loam
Newton Loamy Fine Sand

PROPOSED CONSERVANCY
DISTRICT BOUNDARY

SOIL DELINEATION LINES

NOTE:
SOIL DELINEATION LINES SHOWN AS SCALED AND DIGITIZED FROM THE SOIL SURVEY OF
LA PORTE COUNTY, INDIANA ISSUED JANUARY 1982 BY THE UNITED STATES DEPARTMENT OF
AGRICULTURE SOIL CONSERVATION SERVICE, PURDUE UNIVERSITY AGRICULTURAL EXPERIMENT
STATION AND THE INDIANA DEPARTMENT OF NATURAL RESOURCES, SOIL AND WATER
CONSERVATION COMMITTEE.
THE AERIAL PHOTOGRAPH SHOWN AND LISTED AS THE "2005 INDIANA MAP NATURAL COLOR
ORTHOS (SPRING)" WAS DOWNLOADED FROM THE INDIANA UNIVERSITY WEB SITE THROUGH
THE "INDIANA SPATIAL DATA PORTAL".

← NORTH
SCALE: 1" = 600'

FIGURE 1

PRAIRIE LAKES CONSERVANCY
DISTRICT CONCEPT DRAWING
Parcel in Section 7
Township 37 North, Range 4 West
2nd P.M., LaPorte County, Indiana

Bonar Group
Engineers - Surveyors - Planners
1000 West Main Street, Suite 200
LaPorte, IN 46350
219/321-1234 Fax 219/321-1235

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Job No 10333.00
Q-SEC LaPorte County
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